SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1231

JOE HENDREX,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY TO MEMORANDUM OF RESPONDENT

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Respondent's answer to Point B of our petition that the Court of Appeals was not required to pass on the validity of the Count 2 conviction because the sentences were concurrent and there was no possibility of parole, ignores reality.

This court said, in a somewhat similar situation, in *United States v. Morgan*, 346 U.S. 502, 512, 513, 74 S. Ct. 247, 98 L. Ed. 248:

> "Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties."

The trial court's instructions to the jury on Count 2 were sorely inadequate. None of the safeguards relating to finding of guilt from mere unexplained possession were given as was done in *United States v. Gainey,* 380 U.S. 63, 85 S. Ct. 754, 13 L. Ed. 2d 658.

The inference-of-guilt from unexplained possession statutes should now be re-examined by this court in the light of *Miranda v. Arizona,* 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2nd 694. The Court of Appeals of Florida, in *Young v. Florida,* 203 S. 2d 650, decided on November 14, 1967, that unexplained possession can no longer be used as evidence of guilt in view of *Miranda, supra:*

> "The instruction given to the jury had the effect to demand of the defendant an affirmative explanation for the reason the stolen goods were in his possession. At the same time defendant being in police custodial interrogation within the meaning of Miranda would have had the privilege to remain silent. The privilege to remain silent would be a hollow privilege if that silence would create an inference of guilt at the trial. The fact that the defendant remained silent was used against him at trial in the form of the aforementioned jury instruction in violation of the defendant's Fifth Amendment privilege under the Miranda decision."

Respectfully submitted,

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